

**Minority Report**  
**A-Engrossed**  
**Senate Bill 1530**

Ordered by the Senate February 16  
Including Senate Minority Report Amendments dated February 16

Sponsored by nonconcurring members of the Senate Committee on Environment and Natural Resources: Senators  
OLSEN, WHITSETT

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

**Repeals moratorium on mining using motorized equipment, revises legislative findings related to small scale mining and recreational mining and removes authority for Environmental Quality Commission to establish additional fees for certain permits to operate suction dredges.**

Requires certain state agencies to consult with certain federal agencies to determine whether state and federal mining programs can be better coordinated.

*[Excludes nonaggregate upland placer mining from moratorium on mining using motorized equipment.]*

*[Requires, until January 1, 2017, motorized equipment used for nonaggregate upland placer mining to be operated only during certain hours.]*

*[Requires certain nonaggregate upland placer mining to hold operating permit. Becomes operative January 1, 2017.]*

*[Exempts certain mining operations from exclusion certificate requirements.]*

*[Allows State Department of Geology and Mineral Industries to condition operating permits to protect cultural resources.]*

*[Establishes permitting requirements for motorized in-stream placer mining. Requires Director of Department of State Lands and Director of Department of Environmental Quality to enter memorandum of understanding allowing Department of Environmental Quality to issue removal fill permits required under motorized in-stream placer mining permitting provisions. Authorizes Department of Environmental Quality to issue consolidated water quality and removal fill permits for motorized in-stream placer mining. Places certain restrictions on motorized in-stream placer mining. Becomes operative January 2, 2021.]*

*[Punishes motorized in-stream placer mining without permit coverage by maximum of \$2,000 fine.]*

*[Requires motorized equipment used for motorized in-stream placer mining to be inspected at aquatic invasive species check stations.]*

*[Allows State Department of Geology and Mineral Industries, Department of State Lands and Environmental Quality Commission to take actions necessary prior to operative dates to develop permitting provisions.]*

**Establishes certain protections for mining operations from actions or claims for relief alleging nuisance or trespass.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

Relating to mining; creating new provisions; amending ORS 468B.052 and 517.123; repealing ORS 517.140 and sections 2, 3 and 4, chapter 783, Oregon Laws 2013; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**REPEAL OF SENATE BILL 838 (2013) PROVISIONS**

**SECTION 1. ORS 517.140 and sections 2, 3 and 4, chapter 783, Oregon Laws 2013, are repealed.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

**SECTION 2.** ORS 517.123 is amended to read:

517.123. The Legislative Assembly finds that prospecting, small scale mining and recreational mining:

- (1) Are important parts of the heritage of the State of Oregon; *[and]*
- (2) Provide economic benefits to the state and local communities[.]; **and**
- (3) **Can be conducted in a manner that is not harmful and may be beneficial to fish habitat and fish propagation.**

**SECTION 3.** ORS 468B.052 is amended to read:

468B.052. *[(1)]* Unless the Environmental Quality Commission, as provided in ORS 468.065, establishes different fees for permits issued under ORS 468B.050, a person who operates a suction dredge having a suction hose with an inside diameter of eight inches or less shall, upon application for or renewal of a permit issued under ORS 468B.050, pay to the Department of Environmental Quality:

*[(a)]* (1) For an individual permit:

*[(A)]* (a) A one-time application fee of \$300; and

*[(B)]* (b) An annual renewal fee of \$25.

*[(b)]* (2) For a general permit, either:

*[(A)]* (a) A \$25 annual fee for each year the person registers under the general permit; or

*[(B)]* (b) A \$100 fee for a five-year registration under the general permit.

*[(2)(a)]* *In addition to the fees described in subsection (1) of this section, by rule the commission may establish an additional fee for a permit issued under ORS 468B.050 for a person to operate a suction dredge described in this section. The fee must be adequate to cover the costs of administration, compliance, monitoring and enforcement related to the permit.]*

*[(b)]* *After a fee is established by the commission pursuant to this subsection, the fee is subject to the limitations on increases imposed by ORS 468B.051.]*

## CONSULTATION WITH FEDERAL AGENCIES

**SECTION 4.** The Department of Environmental Quality, the State Department of Geology and Mineral Industries and the Department of State Lands shall consult with the United States Forest Service and Bureau of Land Management to determine whether state and federal mining programs can be better coordinated.

## RIGHT TO MINE

**SECTION 5.** As used in sections 5 to 12 of this 2016 Act:

(1) “Mining” means any type of mining regulated by this state under ORS chapter 517.

(2) “Nuisance” or “trespass” includes but is not limited to actions or claims based on noise, vibration, odors, smoke or dust.

**SECTION 6.** Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes mining a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to mining for which no claim or action is allowed under sections 5 to 12 of this 2016 Act.

**SECTION 7.** (1) No mining shall give rise to any private right of action or claim for relief based on nuisance or trespass.

1 (2) Subsection (1) of this section shall not apply to a right of action or claim for relief for  
2 death or serious physical injury as defined in ORS 161.015.

3 **SECTION 8.** (1) No mining allowed as a preexisting nonconforming use shall give rise to  
4 any private right of action or claim for relief based on nuisance or trespass.

5 (2) Subsection (1) of this section shall not apply to a right of action or claim for relief for  
6 death or serious physical injury as defined in ORS 161.015.

7 (3) Subsection (1) of this section applies only where a mining operation existed before the  
8 conflicting use of real property that gave rise to the right of action or claim for relief.

9 (4) Subsection (1) of this section applies only where a mining operation has not signif-  
10 icantly increased in size or intensity from the effective date of this 2016 Act, or the date on  
11 which the applicable urban growth boundary is changed to include the subject mining oper-  
12 ation within its limits, whichever is later.

13 **SECTION 9.** In any action or claim for relief alleging nuisance or trespass and arising  
14 from a mining operation, the prevailing party shall be entitled to judgment for reasonable  
15 attorney fees and costs incurred at trial and on appeal.

16 **SECTION 10.** The provisions of sections 5 to 12 of this 2016 Act shall not impair the right  
17 of any person or governmental body to pursue any remedy authorized by law that concerns  
18 matters other than a nuisance or trespass.

19 **SECTION 11.** The State Department of Geology and Mineral Industries may adopt rules  
20 to implement the provisions of sections 5 to 12 of this 2016 Act.

21 **SECTION 12.** The State Department of Geology and Mineral Industries, Department of  
22 Environmental Quality, Department of State Lands, State Department of Agriculture or  
23 State Forestry Department is not required to investigate complaints if the department has  
24 reason to believe that the complaint is based on practices protected by sections 5 to 12 of this  
25 2016 Act.

26  
27 **CAPTIONS**

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29 **SECTION 13.** The unit captions used in this 2016 Act are provided only for the conven-  
30 ience of the reader and do not become part of the statutory law of this state or express any  
31 legislative intent in the enactment of this 2016 Act.

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33 **EMERGENCY CLAUSE**

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35 **SECTION 14.** This 2016 Act being necessary for the immediate preservation of the public  
36 peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect  
37 on its passage.